



**CONSTITUTION**

**OF**

**CLOUD NINE**

## TABLE OF CONTENTS

1. INTERPRETATION
2. PREAMBLE
3. CREATION OF ASSOCIATION
4. STATUS OF ASSOCIATION
5. MAIN OBJECT
6. FINANCIAL YEAR END
7. MEMBERSHIP
8. APPROVAL OF PROPOSED WORK
9. CONSTRUCTION OF DWELLING
10. LEVIES
11. DEALING WITH COMMON AREAS
12. THE LIFESTYLE CENTRE AND ANCILLARY RIGHTS
13. SERVICES
14. SECURITY AND ACCESS TO VILLAGE
15. ROADS AND LANES ON VILLAGE
16. CONTRACTS AND REGULATIONS
17. MANAGER
18. BREACH
19. CESSATION OF MEMBERSHIP
20. TRUSTEE COMMITTEE
21. APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEE MEMBER
22. OFFICE OF TRUSTEE
23. FUNCTION AND POWERS OF TRUSTEE COMMITTEE
24. PROCEEDINGS OF TE TRUSTEE COMMITTEE
25. GENERAL MEETINGS OF ASSOCIATION
26. NOTICE OF MEETING
27. VENUE OF MEETING
28. QUORUM
29. AGENDA AT MEETINGS
30. PROXIES
31. VOTING
32. OTHER PROFESSIONAL OFFICERS
33. ACCOUNTS
34. AUDIT
35. SERVICE OF NOTICES
36. INDEMNITY
37. ARBITRATION
38. AMENDMENTS TO CONSTITUTION

**ANNEXURES**

"A" SITE DEVELOPMENT PLAN

"B" ARCHITECTURAL DESIGN GUIDELINES AND BUILDER'S CODE OF CONDUCT

"C" VILLAGE RULES AND CODE OF CONDUCT

## 1. INTERPREATION

In these presents:

1.1 The following words shall, unless the context otherwise requires, have the meaning hereinafter assigned to them:

1.1.1 "the Association" means the Cloud Nine Owners' Association;

1.1.2. "Chairperson" means the Chairperson of the Trustee Committee;

1.1.3 "the Common Areas" means such private open spaces and private roads as may in the future be created and/or acquired by the Developer and/or the Association for purposes of the Village with the approval of the relevant authorities;

1.1.4 "the Architectural Design Guidelines" means the Architectural Design Guidelines, as amended by the Association from time to time, for the development of improvements on the Residential Erven, annexed hereto marked "B";

1.1.5 "the Developer" means Cloud Retirement Development CC, Company No CC/2020/00499 or its successor in title as the developer of the Village;

1.1.6 "Development Period" means the period commencing on the creation of this Association and terminating upon the transfer of the last of the Residential Erven from the Developer, or such earlier date on which the Developer notifies the Association in writing that it terminates the development period;

1.1.7 "Developer Trustee" means a Trustee who is nominated or appointed by the Developer;

1.1.8 "the Village" means the Common Areas, the Residential Erven and the Roads;

1.1.9 "the Land" means the erven reflected on Annexure "A";

1.1.10 "Member(s)" means a member(s) of the Association;

1.1.11 "the Office" means the registered office of the Association;

1.1.12 "these presents" means this Constitution and regulations and bylaws of the Association from time to time in force, and shall include the annexures hereto;

1.1.13 "Registered Owner" means the registered owner of any of the Residential Erven.

1.1.14 "Registered Erf" or "Residential Erven", means a residential erf or all the residential erven, as the case may, be situated on the Land;

1.1.15 "Services" means such municipal related services as may be required on the Village, including (but not limited to) electricity, road services, stormwater, water, sewage and waste removal;

1.1.16 "a Trustee" means one of the Trustee Committee,

1.1.17 "the Trustee Committee" means the Board of Trustees of the Association;

1.1.18 "in writing" means written printed or lithographed or partly one and partly another. and other modes of representing or producing words in a visible form.

## 2. **PREAMBLE**

2.1 The subdivision of the Land was approved as part of a residential property development based on a privately owned property.

2.2 The Association is hereby constituted by agreement between the Registered Owners.

2.3 The Association will be a non-profit company to be registered in accordance with the provisions of Section 21 of the Companies Act No. 28 of 2004.

## 3. **CREATION OF ASSOCIATION**

The Association is hereby created with effect from the date of registration of transfer in the Deeds Office of the first Registered Erf from the Developer to an end-purchaser.

## 4. **STATUS OF THE ASSOCIATION**

4.1 The Association will:

4.1.1 have legal personality and be capable of suing and being sued in its own name; and

4.1.2 not operate for profit, but for the benefit of the Members.

4.2 No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

5. **MAIN OBJECT**

The main object of the Association is the control over and the maintenance of buildings, services and amenities within the Village and collection of levies from the members.

6. **FINANCIAL YEAR END**

The financial year end of the Association is the end of February of each year.

7. **MEMBERSHIP**

7.1 For the duration of the Development Period, or for so long as the Developer owns any of the Residential Erven, the Developer shall be a Member of the Association.

7.2 Membership of the Association shall be limited to and compulsory for the Registered Owners provided that:-

7.2.1 a person who is entitled to obtain a certificate of registered title to any such Residential Erf shall be deemed to be the Registered Owner thereof;

7.2.2 where any such Registered Owner is more than one person, all the Registered Owners of that erf shall be deemed jointly and severally to be one Member.

7.3 Membership in terms of clause 7.2 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner,

7.4 When a Member ceases to be the Registered Owner he shall ipso facto cease to be a Member of the Association

7.5 A Registered Owner may not resign as a Member of die Association.

7.6 The Trustee Committee may, by regulation, provide for issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

7.7 The rights and obligations of a Member shall not be transferable.

7.8 No Member shall let or otherwise part with the occupation of his Residential Erf without

obtaining the written agreement of the proposed occupier that he will be bound by the provisions of this Constitution.

7.9 The Member shall be liable for the acts or omissions of all persons occupying his residential Erf, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, invitees, contractors and agents.

7.10 A Member shall not be entitled to:

7.10.1 alienate or transfer a residential Erf unless it is a condition of the alienation and transfer that:

7.10.1.1 a transferee becomes a Member of the Association;

7.10.1.2 the registration of transfer of that residential Erf into the name of the transferee shall ipso facto constitute a transferee as a Member of the Association;

7.10.1.3 he obtains a clearance certificate from the Association which shall be given provided -

7.10.1.3.1 the alienee of such residential Erf agrees in writing to accept and abide by the Constitution of the Association.;

7.10.1.3.2 0,5 % of the first selling price of the residential Erf is paid to the Association by the Registered Owner;

7.10.1.3.3 15% of the positive difference between purchase price and new selling price is paid to the Association by the Registered Owner

7.10.1.3.4 all amounts owing by the Registered Owner to the Association have been paid or satisfactory secured;

7.10.1.3.5 all obligations of the Registered Owner in terms of this Constitution have been complied with in full.

## 8. APPROVAL FOR PROPOSED WORK

A Member desiring to erect any buildings and/or structures of any nature whatsoever, or to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Residential Erf shall submit a full set of proposed building and landscaping plans (if applicable), which indicate both construction and design details, to the Trustees, or any person nominated by the Trustees, for written approval, prior to submission of such plans to the Omaruru Municipality Local Authority.

## 9. CONSTRUCTION OF DWELLINGS

9.1 Members are obliged to commence construction of dwellings on their respective Residential Erven within 5 (five) years from the commencement date and to complete construction of such dwellings within 2 (two) year of the date that the Member commences construction ("the completion date"). For the purposes of this Clause 9:

9.1.1 "commence construction" or "commences construction" means the commencement of any work of whatsoever nature on the relevant Residential Erf, as certified by the Association whose certificate shall be final and binding on the Member;

9.1.2 "complete construction" means a sufficiently completed dwelling for beneficial occupation, constructed and completed in accordance with the Architectural Design Guidelines and other guidelines referred to in Clause 5.1 and as certified as complete by the Association, whose certificate shall be final and binding on the parties;

9.1.3 "the commencement date" means the date of the first registration of the relevant Residential Erf from the Developer into the name of the purchaser thereof ;

9.1.4 In the event that a Member fails to commence construction by the commencement date or to complete construction of the relevant dwelling by the completion date, the Developer shall be entitled to require the Member (who is the Registered Owner of the relevant Residential Erf at the time) to retransfer the Residential Erf in question back to the Developer at the same purchase price that the Developer sold such Residential Erf to the purchaser who became the first Registered Owner thereof. The Developer shall notify the



Member in writing of its intention within 60 (sixty) days of the Association's certificate referred to in clause 9.1.1 and 9 1.2 above. The registration of the retransfer shall be affected by the Developer's Legal Practitioners at the cost of the Member and the Member shall be obliged to obtain the written consent of the holder of any mortgage bond over the Residential Erf and shall be further liable for all costs and penalties relating to the cancellation of such mortgage bond.

- 9.2 Should the Developer exercise its right as set out in clause 9.1.4 above and the Member fails, to sign all transfer documents or take any other steps required for such retransfer after being called upon to do so, the Developer or the Association, shall be entitled to sign such documents or take any such steps on behalf of the Member. The Member hereby grants to the Developer and to the Association a Power of Attorney in *rem suam* authorizing either of them to sign all such documents and take all such steps in the event of the Member failing to do so. The Member hereby indemnifies the Developer and the Association and holds them harmless against any claim which may be made against them as result of their exercising the Powers contains in clause 9.2.
- 9.3 The Member shall not be entitled to any compensation whatsoever for any improvements to the Residential Erf effected by or on behalf of the Member.
- 9.4 Should the Developer not exercise its rights in terms of clause 9.1.4 above, the Members acknowledge and agree that the Association shall be entitled in that event to impose whatever penalties it deems appropriate in its sole discretion on the Member, which penalties shall become a debt due and payable by the Member to the Association.

## 10. LEVIES

- 10.1 The Members shall be jointly liable for expenditure incurred by the Association.
- 10.2 The Trustee Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will incur in respect of: -
- 10.2.1 facilities and services in connection with the Village;
- 10.2.2 the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs.
- 10.3 In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association.
- 10.4 A Member shall be liable to pay levies with effect from the date upon which the

Member becomes a Registered Owner, pro-rated where applicable.

- 10.5 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members equal to or as near as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year and shall be paid by way of a debit order in favor of the Association or by any other method as determined by the Manager from time to time.
- 10.6 The Trustee Committee, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in Clause 10.2, and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit,
- 10.7 Any amount due by a Member way of a levy shall be a debt due by him to the Association, the obligation of the Member to pay a levy shall cease upon his ceasing to the member of the Association, without prejudice to the Association's rights to recover arrear levies. No levies paid by a Member shall be under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to a Residential Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that erf. No Member shall transfer his Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 10.8 Subject to clause 10.9, the total levy payable shall be borne jointly by the Members in equal shares.
- 10.9 The Developer shall not be required to pay levies as contemplated in clause 10.8 above for the duration of the Development Period. The Developer shall, however, for the duration of the Development Period, pay the difference between the actual expenses incurred by the Association (as referred to in clause 10.1 above) but excluding any provisions for a reserve fund, and the aggregate of the levies payable jointly by the Members who are registered owners of Residential Erven each month from time to time, For the avoidance of any doubt it is recorded that in determining the aggregate of individual levies payable by Members who are registered owners from time to time for the purposes of this clause 10.9, the aggregate shall include all levies payable by such Members, irrespective of whether or not such levies have actually been paid by those Members. In the event that there is a dispute as to the actual costs incurred by the Association at any time, then the matter shall be referred to the

Developer's auditor who, acting as an expert and not as an arbitrator, shall issue a certificate which shall be final and binding on the parties and who shall be entitled for this purpose to have access to all the records and books of account of the Association as and when required. The costs of the said auditor shall be borne by the Association.

- 10.10 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

## **11. DEALING WITH THE COMMON AREAS**

- 11.1 Neither the whole nor any portion of the Common Areas shall be:—

11.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or

11.1.2 mortgaged; or

11.1.3 subjected to any rights other than those contained in the present existing title deeds of the subdivided erven constituting the Land, or to be imposed in the title deed(s) of the Common Areas as required by any relevant authority or as contained in this Constitution, whether registered in a Deeds Registry or not, of use, occupation or servitude.

- 11.2 The Association is hereby empowered to take transfer and shall take title to the Common Areas as soon as is legally possible.

- 11.3 The Association acknowledges that the Omaruru Municipality Local Authority shall not be responsible for, and the Association shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Areas, all services therein (other than services provided and/or maintained by the Omaruru Municipality Local Authority) (if any) and all amenities and improvements located or to be located on or within the Common Areas.

## **12. THE COMMUNAL CENTRE AND ANCILLARY FACILITIES**

- 12.1 During the Development Period, the Developer shall be entitled at its sole discretion to construct a Communal Centre of whatever nature and any other ancillary facilities, at its own cost, initially for marketing purposes and thereafter for use by the members of the Association.

- 12.2 Once the Association has taken transfer of such facilities, which transfer shall take place at the end of the Development Period:-

12.2.2 Members will be entitled to use such facilities on such terms and conditions as

the Trustee Committee may prescribe from time to time;

- 12.2.3 the facilities, if at all constructed, will be for the private use of Members save that the Association is entitled to grant additional membership to persons who are not Members to ensure the financial sustainability thereof.

### 13. SERVICES

With effect from the date upon which the Association is created in terms of clause 2, the Association shall be obliged to provide the Services to the extent that the Service are not provided by Omaruru Municipality Local Authority. Provision of the Services shall include the maintenance and repair of any infrastructure required to provide the Services.

### 14. SECURITY AND ACCESS TO THE ESTATE

The Association shall implement and maintain adequate security measures and systems for controlled access to the Village, which all Member, their successor-in-title, employees, guests or other person shall abide by.

### 15. ROADS AND BUILDING LINES IN THE VILLAGE

Subject to approval from the relevant authority(ies) 3-meter and 5-meter building restriction lines will be registered as servitudes in order to improve the functional and aesthetic use of the relevant erven. Such servitudes will have the effect of reducing the useable portion of the relevant erven.

### 16. CONTRACTS AND REGULATIONS

16.1 The Trustee Committee may from time to time

- 16.1.1 make rules and regulations (and vary and/or amend any existing rules and regulations) governing, inter alia:—

16.1.1.1 the Members' rights of use, occupation and enjoyment of the Common Area;

16.1.1.2 the external appearance at and the maintenance of the Common Area and the building or other improvements erected thereon;

16.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Residential Erven, subject always to the Architectural Design Guidelines and requirements of the Omaruru Municipality Local Authority;

- 16.1.1.4 the conduct off Members generally;
  - 16.1.2 enter into agreement(s) with local authorities governing the matters set out in sub-clause 17.1 and any other incidental matters;
  - 16.1.3 enter into agreement(s) with the Omaruru Municipality Local Authority and other parties for the provision of Services to the Village;
  - 16.1.4 impose penalties which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties. Without detracting from the generality of the foregoing, the Trustees shall be entitled to impose penalties in the event of a Member not completing construction of his dwelling as provided in clause 9, provided that in the event of the Developer exercising its rights to re-purchase the Residential Erf in question, then in such circumstances the Trustee shall not be entitled to impose such penalties in respect of such default.
- 16.2 It is recorded that the trustees shall be deemed to have adopted the Village Rules and Code of Conduct annexed hereto marked "D" which code of conduct constitutes rules and regulations for the purposes of clause 16.1.
- 16.3 Each member undertakes to the Association that he shall comply with:
- 16.3.1 the provisions of this Constitution;
  - 16.3.2 any regulations made in terms of sub-Clause 16.1.1;
  - 16.3.3 any agreements referred to in sub-Clause 16.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

## 17. **MANAGER**

- 17.1 During the Development Period, the Developer shall be entitled to appoint a manager to manage the affairs of the Association. It shall be within the absolute discretion of the Developer to determine the terms and conditions of the appointment of such a manager, including the fees and/or remuneration payable.
- 17.2 Any fees and/or remuneration payable to the Manager shall be paid by the Association and not the Developer.
- 17.3 The appointment of the manager may extend beyond the Development Period, provided that the Developer shall endeavor to procure, when making such appointment, that the

appointment may, if so required by the Association at a General Meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the Development Period.

17.4 After the Development Period, the Association shall be responsible for the appointment of any successive managers, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.

17.5 Subject to this Constitution and the terms of his appointment, the manager shall have the full power to manage and control the business and affairs of the Association and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself.

## 18. BREACH

18.1 Should any Member -

18.1.1 fail to pay on due date any amount by the Member in terms of this Constitution or any regulation made thereunder and remain in default for more than fourteen (14) days after being notified in writing to do so by the Trustees; or

18.1.2 commit any other breach of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of fourteen (14) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time; then and in either such event, the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other Member may have in law, including the right to claim damages:—

18.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or

18.1.4 in the case of Clause 18.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member,

18.2 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all

legal costs incurred by the Trustees or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of Namibia (or its successors), tracing fees and collection commission.

18.3 Without prejudice to all or any of the rights granted to the Trustees of the Association under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at 2% (two percent) above the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount.

## 19. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

## 20. **TRUSTEE COMMITTEE**

20.1 There shall be a Committee of the Trustees which shall consist of not less than three (3) and not more than six (6) Members.

20.2 No person may be a Trustee, if such person is not a member, by virtue of his/her/its ownership, whether personally or through membership in a Close Corporation, Company or Trust, of an immovable property within the Village, of the Association.

20.3 No minors, persons of unsound mind or persons under curatorship shall be legible for trusteeship.

## 21. **APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

21.1 The Developer shall appoint the first Trustee of the Association and any other Trustees appointed from time to time during the Development Period. Save as set forth in clause 21.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his appointment, by random selection through a raffle drum or spinning barrel or election, at which meeting each trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting, subject however to the Developer's rights as set out in the provisions sentences of this clause 21.1

21.2 A Trustee shall be deemed to have vacated his office as such upon:

21.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

21.2.2 his making any arrangement or compromise with his creditors;

21.2.3 his conviction for any offence involving dishonesty;

21.2.4 his becoming of unsound mind or being found lunatic;

21.2.5 his resignation from such office in writing delivered to the Secretary;

21.2.6 his death;

21.2.7 his being removed from office by a Special Resolution of the Members;

21.2.8 his alienating his Registered Erf in the event that he was a Registered Owner,

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

21.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee, subject however to the rights of the Developer as set out in the second sentence of clause 21.1 above which shall apply to this clause 21.3.

## 22. OFFICE OF TRUSTEES

22.1 Subject to clause 22.2, the Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.

22.2 The Chairperson, and Vice-Chairperson, shall, for the duration of the Development Period, be appointed by the Developer. The Chairperson and Vice-Chairperson shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

22.3 Subject to the rights of the Developer as set out in clause 22.2 above, within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairperson and Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairperson or Vice-Chairperson shall ipso



facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 22.2 above.

- 22.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as maybe prescribed by the Trustee or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 22.5 The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Trustee Committee.
- 22.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairperson, Vice-Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

### **23. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

- 23.1 Subject to the express provisions of this Constitution, including but not limited to clause 19, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulation as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 23.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 23.3 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it

shall decide from time to time.

23.4 The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:

23.5.1 as to disputes generally;

23.5.2 for the furtherance and promotion of any of the objects of the Association;

23.5.3 for the better management of the affairs of the Association;

23.5.4 for the advancement of the interests of Members;

23.5.5 for the conduct of Trustee Committee meetings and general meetings;

23.5.6 to assist it in administering and governing the Association's activities generally;

and shall be entitled to cancel, vary or modify any of the same from time to time.

#### 24. **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

24.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.

24.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.

24.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees.

24.4 The Chairperson shall preside as such at all meetings of the Trustee Committee.

24.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairperson of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association

Members and Local Authority.

- 24.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded.
- 24.7 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

## 25. GENERAL MEETINGS OF THE ASSOCIATION

- 25.1 The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 6 (six) months after each financial year. Notwithstanding the foregoing, the first Annual General Meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of clause 26.1 below calling it.
- 25.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 25.3 All general other than Annual General Meetings shall be called special general meetings.
- 25.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

## 26. NOTICE OF MEETINGS

- 26.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by twenty-one (21) days' notice in writing at the least, and a Special General Meeting, other than one called for the passing of a Special Resolution, shall be called by fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly

called if it is so agreed:

26.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

26.1.2 in the case of a special general meeting, by the Developer (for the duration of the Development Period), and by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total number of votes (as provided for in clause 32.1 below of all Members.

26.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

## 27. **VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

## 28. **QUORUM**

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one-half of the total votes of all Members of the Association entitled to vote, also by virtual attendance, for the time being save that not less than three (3) Members must be personally present, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

## 29. **AGENDA AT MEETINGS**

In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

29.1 the consideration of the Chairperson's report to the Trustee's Committee;

29.2 the election or appointment by random selection, as set out in 21.1 above, of the Trustee Committee;

29.3 the consideration and fixing of the remuneration of the Auditors for the financial year of

the Association preceding the Annual General Meeting.

### 30. PROXIES

A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairperson of the Board of Directors of the Company or by its secretary, and where an association of person, by the secretary thereof.

### 31. VOTING

31.1 Subject to the provisions of clause 32.6 below, at every general meeting, the following provisions shall apply in regard to voting:

31.1.1 every Member in person or by proxy and entitled to vote shall have the number of votes for each Residential Erf registered in his name, as set out below, provided that if a Residential Erf is registered in more than one person's name, then they shall jointly have one vote.

31.1.2 in the event of two or more Residential Erven being consolidated, then the Member in question shall continue to have the same number of votes to be held prior to consolidation, as if such consolidation had not taken place.

31.2 Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

31.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands.

31.4 Voting on the election of a Chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, subject however to the Developer's rights in clauses 24.3 and 28.1.

31.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

- 31.6 An ordinary resolution (that is a resolution other than a Special Resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon as provided for in clause 32.1 above, provided however, that for the duration of the Development Period, no vote shall be carried unless the Developer or its proxy votes in favour of the Resolution. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 31.7 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favor of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

## 32. OTHER PROFESSIONAL OFFICERS

- 32.1. Save as specifically provided otherwise in this Constitution, the Trustee Committee shall all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, property managers, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.
- 32.2. Notwithstanding the provisions contained in 32.1 above, the Association shall appoint Mountain Ash Investment CC as manager of the Association, for *inter alia* the collection of payments and the maintenance of the Common Areas of the Village, on the terms and conditions set out in a management agreement to be entered into between the Association and Mountain Ash Investment CC.

## 33. ACCOUNTS

- 33.1 The Trustees shall cause proper books of account and records to be kept so as daily to record the transactions and financial position of the Association, including
- a record of the assets and liabilities of the Association;
  - a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
  - a register of Members showing in each case their addresses;

- individual ledger accounts in respect of each owner reflecting at least the amounts due by each Member and the date on which the same become due; the amounts paid by each Member and the date on which same was paid.

33.2 The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations, as to the time and manner of the inspection, by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

33.3 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 26.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

33.4 **Deposit and Investment of Funds**

The Trustees shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed on a General Meeting of the Association, such monies shall only be withdrawn for the for the purpose of payment of the expenses of the Association or investments in terms of 33.5

33.5 Any funds not immediately required for disbursements may be invested in a savings or similar account with any commercial bank or any other registered financial service provider or deposit receiving institutions approved by the Trustees from time to time. Interest accrued on monies invested shall be for credit of the Association and shall be used by the Association for any lawful purpose, provided that such use of funds shall not be in conflict with the provisions contained in this Constitution.

#### 34. **AUDIT**

Once at least in every year, the accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

#### 35. **SERVICE OF NOTICES**

- 35.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by Email or post in a prepaid registered letter, properly addressed to the Member at the address of the Residential Erf owned by him.
- 35.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of Namibia, but any Member may require the Association, by notice, to record an address within the Republic of Namibia which shall be deemed to be his address for the purpose of the service of notices.
- 35.3 Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 35.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

## 36. INDEMNITY

- 36.1 All Trustee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 36.2 Every Trustee Member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee Member, his duties as Chairperson or Vice-Chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 36.3 A Trustee Member shall not be liable for the acts, receipt, neglects or defaults of the Auditors or of any of the other Trustee Members, whether in their capacities as Trustee Members or as Chairperson or Vice-Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title or any property acquired by the Trustee Committee for or on behalf of the Association, or for



the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error or judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through the lack of bona fides or breach of duty or breach of trust.

### 37. **ARBITRATION**

37.1 Any dispute, question or difference arising at any time between a Member or between Member and Trustees out of or in regard to:

38.1.1 any matters arising out of this Constitution; or

38.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

38.1.3 the interpretation of this Constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

37.2 Notwithstanding clause 38.1, a party declaring a dispute in respect of payment of levies, subject to clause 9 is not obliged to refer the dispute to arbitration and may institute court proceedings.

37.3 Arbitration shall be held in Windhoek informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible, it shall be held and concluded within twenty one (21) Business Days after it has been demanded.

37.4 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

37.4.1 primarily an accounting matter an independent accountant,

37.4.2 primarily a legal matter.- a practicing counsel or legal practitioner of not less than ten (10) years' standing;

37.4.3 any other matter an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

37.5 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 37.4.1, 37.4.2, 37.4.3, or upon a particular arbitrator in terms of sub-clause 38.4.3, within three (3) Business Days after the arbitration has been demanded, then:

37.5.1 the President for the time being of the Law Society of Namibia (or its successors) shall determine whether the question in dispute falls under sub-clauses 37.4.1, 37.4.2 or 37.4.3; or

37.5.2 the President for the time being of the Law Society Namibia (or its successors) shall nominate the arbitrator in terms of Clause 38.5 within seven (7) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the twenty-one (21) Business Days referred to in Clause 37.2,

37.6 The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

37.7 The decision of the arbitrator shall be final and binding and may be made an Order of the High Court of Namibia (or its successors) upon the application of any party to the arbitration.

37.8 Notwithstanding anything to the contrary contained in clauses 37.1 and 37.7 inclusive, the Trustee shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.

### **38. INSURANCE AND LETTING OF PROPERTIES**

38.1. Short-term leasing and renting out of Properties, for the purposes of holiday accommodation, like "Air BnB" and similar revenue-generating businesses, within the Village is strictly prohibited, unless prior written authorization has been granted by the Association.

38.2. Each homeowner is responsible for their own insurance, the Association shall not be responsible for the arranging, payment or maintenance of any insurance, other than that required for the Common Areas. No homeowner shall have any claim against the Association for any loss or damage incurred or failure to arrange and/or maintain insurance on his/her Property.

### **39. AMENDMENTS TO CONSTITUTION**

39.1 This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at an Annual General Meeting or General Meeting of the Members.

39.2 Further to clause 39.1 above, any amendment or alteration to Clauses 4, 7, 10.1, 10.4, 10.6, 10.7, 10.10, 34 and 38.1 of the Constitution shall be subject to the prior written consent of the Omaruru Municipality Local Authority:

SIGNED BY THE FIRST TRUSTEES

SIGNATURE

DATE

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